

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-240-E - ORDER NO. 2021-30
JANUARY 15, 2021

IN RE: Bernard McFadden, Complainant/Petitioner v.) ORDER DENYING
Dominion Energy South Carolina,) MOTION TO DISMISS
Incorporated, Defendant/Respondent)

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Motion to Dismiss the Complaint of Bernard McFadden filed by Dominion Energy South Carolina, Inc. (“DESC,” “Dominion” or the “Company”).

On October 6, 2020, Mr. McFadden (“Complainant”) filed a Complaint against DESC primarily alleging that the Company filed a false meter reading report and overcharged for service. First, Complainant states that his meter was closed behind a gate and monitored by video surveillance. He claims that his video footage fails to show that the meter was tested. Second, Mr. McFadden maintains that he is being overcharged because his bills have gone up even though his house has been weatherized and a new heating and air conditioning system and ductwork have been installed. Lastly, Mr. McFadden alludes to an agreement to pay a flat rate of \$150/month as a set rate.

On October 20, 2020, Dominion filed an Answer and Motion to Dismiss. The filing also included the sworn affidavits of Cindi G. Hux, Supervisor for Customer Service-Quality Assurance, and Brandy Kent, the Company’s Energy Service Representative. Ms. Hux performed the investigation of the Complaint and Mr. Kent performed the meter test

at Mr. McFadden's house. With respect to Mr. McFadden's allegation that the Company filed a false meter testing report, DESC states that on August 25, 2020, Ms. Kent, assisted by a contract field services technician, conducted an in-field electric meter test at Complainant's address.

According to the Company, Ms. Kent knocked on the front door, but no one answered. Ms. Kent and the technician then entered the back yard and conducted the meter test with the Company's testing equipment. Consistent with DESC's normal practice and applicable Commission regulations, two separate in-field electric meter tests were performed on Mr. McFadden's meter. DESC further states that the tests performed on the meter showed that it was working properly and operating within regulatory standards.

With respect to Mr. McFadden's allegation that he was overcharged, DESC avers that Mr. McFadden is a residential Rate 8 customer, and his monthly charges are properly calculated under Rate 8, as demonstrated by his electric bills. An analysis of Mr. McFadden's bills show that both his average daily usage and his average daily cost were lower for the months of July, August, September, and October 2020, than they were for the bills in the same months in 2019. DESC states "this analysis appears to wholly undercut Mr. McFadden's allegation that his past utility bills were 'actually cheaper' prior to the alleged home improvements." DESC further states that Mr. McFadden's average daily usage and cost per kilowatt-hour ("kWh") went down notably despite the fact that temperatures in the area were slightly higher in August 2020 than in August 2019.

DESC denies that any such agreement to "pay approximately \$150.00 per month as a set rate" exists between the Company and Mr. McFadden. DESC attests that it offered

Mr. McFadden the opportunity to enroll in the Company's Budget Billing program on his bill statement dated August 10, 2020. Under the program, Mr. McFadden's bill would be \$144.00. According to the Company, Mr. McFadden was not enrolled in the program because he failed to pay \$144. He instead paid \$150.00. Further, Mr. McFadden has not contacted the Company since August 10, 2020, to indicate his desire to enroll in Budget Billing.

The Company requests that the Commission dismiss the Complaint on the grounds that it fails to state a claim upon which relief can be granted. The Company argues Mr. McFadden has failed to allege violation of any statute, rule, regulation, or order of the Commission. The Company also states that Mr. McFadden alleged that Dominion filed a "false meter testing report" and that his utility bills were cheaper with his older single pane wooden windows, doors and HVAC prior to renovations. However, on August 25, 2020, DESC claims to have performed two separate in-field electric meter tests which indicated that the meter was working fine. These differing factually allegations create questions of fact for the Commission to determine based upon the testimony and evidence to be presented at the hearing. Mr. McFadden did not file a response to the Company's Motion to Dismiss.

When considering a motion to dismiss, the court should only consider the allegations set forth on the face of the plaintiff's complaint. *Gentry v. Younce*, 337 S.C. 1, 522 S.E.2d 137, 139 (1999). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). *See also Kennedy v.*

Henderson, 289 S.C. 393, 346 S.E.2d 526 (1986) (where there is cause for doubt, or it is clear that the ends of justice may well be promoted by a trial on the merits, a demurrer should be denied where novel issues are present or are involved); *Springfield v. Williams Plumbing Supply Co.*, 249 S.C. 130, 153 S.E.2d 184 (1967). *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999), overruled by *Proctor v. Whitlark & Whitlark, Inc.*, 414 S.C. 318, 778 S.E.2d 888 (2015). The motion to dismiss should not be granted if the “facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999), overruled by *Proctor v. Whitlark & Whitlark, Inc.*

The alleged facts in this case related to the claims of Mr. McFadden and the defenses of DESC cannot be fully presented, addressed or examined without a hearing on the merits. The issues are conflicting and warrant the Commission scheduling a hearing so that the facts can be explored in their entirety by all parties in this case.

I. FINDINGS OF FACT

1. The Commission finds that there appear to exist reasonable factual questions for the Commission to determine following a hearing of this case.

2. The Commission finds that a hearing should be scheduled to develop a record upon which the Commission may base an informed decision.

II. CONCLUSIONS OF LAW

1. The Commission concludes the Motion of Dismiss filed by DESC should be denied.

2. The Commission concludes that the Clerk's Office shall schedule a hearing and provide a pre-hearing schedule for the filing of testimony and exhibits.

III. ORDERING PROVISIONS

IT IS THEREBY ORDERED THAT:


1. The Motion to Dismiss of Dominion Energy South Carolina, Incorporated is denied.

2. The Clerk's Office shall schedule a hearing and provide a pre-hearing schedule for the filing of testimony and exhibits.

3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:





Florence P. Belser, Vice Chairman
Public Service Commission of
South Carolina